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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,764	10/21/2003	Robert Lawrence Prosise	066544-9011	4533

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EXAMINER

TRAN, LIEN T

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,764

Applicant(s)

PROSISE ET AL.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 37, 38-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The limitations in claims 37, 38 and 39 cannot be found in the specification. While the examples disclose the fiber and olestra content of different products, none of the examples discloses the amounts as in claim 39.

Claims 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spicer in view DeVay

Spicer discloses a dough comprising ground oat bran, corn bran and corn meal. The dough comprises about 55-70% soluble dietary fiber. The dough comprises oat bran at a level of from about 45-55% oat bran. The dough further comprises carbohydrate such as fructose, sucrose, dextrose and an edible oil. The dough is extruded to form an expanded snack product. (see columns 3-6)

Spicer is silent about the dough being a sheeted dough.

DeVay teaches to form a sheeted dough. The sheeted dough is cut into pieces and baked or fried or otherwise heated to obtain a crispy snack product.

The limitation of uncooked dough does not define over Spicer. Spicer discloses on column 3 lines 38-40 "the method includes the steps of preparing an uncooked dough". The cooking is done after the dough is formed to make the snack product. Spicer teaches to make the food product using cooking-extrusion. However, it would

have been obvious to make the food product using other known method. For example, it would have been obvious to make the food product by the method taught by DeVay by first forming a dough sheet and then forming the pieces for cooking from the dough sheet. As to the amount of beta glucan, the oat bran is a source of beta-glucan soluble fiber. The Spicer dough comprises more oat bran than that disclosed for the claimed dough; page 23 of the specification discloses a dough comprising 22% oat bran. The Spicer dough comprises at least twice the amount of oat bran; thus, it is obvious the dough disclosed by Spicer contain at least the amount of beta-glucan claimed.

Claims 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spicer in view of applicant's admission of prior art.

Spicer does not disclose adding non-digestible fat comprising olestra.

Non-digestible fat is well known in the art; this is shown by the numerous patents referred to by applicant on page 7 of the specification.

Spicer teaches adding fat to the dough. It would have been obvious to use non-digestible fat such as olestra in the dough to obtain a dough that is free of fat and subsequently low in calorie content and fat content and still maintaining the texture and taste of fat-containing dough.

Claims 36-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spicer in view of applicant's admission of prior art and Devay.

Spicer discloses a dough comprising ground oat bran, corn bran and corn meal. The dough comprises about 55-70% soluble dietary fiber. The dough comprises oat

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bran at a level of from about 45-55% oat bran. The dough further comprises carbohydrate such as fructose, sucrose, dextrose and an edible oil. The dough is extruded to form an expanded snack product. (see columns 3-6)

Spicer does not disclose adding non-digestible fat comprising olestra and coating the surface of the cooked dough with non-digestible fat.

Non-digestible fat is well known in the art; this is shown by the numerous patents referred to by applicant on page 7 of the specification.

Devay teaches to coat the baked dough with oil and then adding seasoning to the oil-coated baked dough. (see col. 4 lines 59-62)

Spicer teaches adding fat to the dough. It would have been obvious to use non-digestible fat such as olestra in the dough to obtain a dough that is free of fat and subsequently low in calorie content and fat content and still maintaining the texture and taste of fat-containing dough. It would have been obvious to coat the cooked dough with fat as taught by Devay so that seasoning can be applied to the dough to enhance the taste, texture and flavor of the cooked dough. It would have been obvious to use non-digestible fat to obtain product having lower calorie and fat content. As to the amount of beta glucan and the amount of beta-glucan per serving, the oat bran is a source of beta-glucan soluble fiber. The Spicer dough comprises more oat bran than that disclosed for the claimed dough; page 23 of the specification discloses a dough comprising 22% oat bran. The Spicer dough comprises at least twice the amount of oat bran; thus, it is obvious the dough and product disclosed by Spicer contain at least the

amount of beta-glucan claimed. As to the amount of olestra, it would have been obvious to vary this amount depending on the type of food product made.

Applicant's argument has been considered but deemed to be moot in view of the change in the rejection. The Ball reference is no longer used in the rejection. The issue with respect to the new limitation of "an uncooked dough" and the inclusion of non-digestible fat is addressed above in the rejections.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 16, 2004


LIEN TRAN
PRIMARY EXAMINER
